



DECISION ON ADMISSIBILITY

Case no. CH/99/1963

Vesna and Slobodan ŠTEKOVIĆ

against

THE REPUBLIKA SRPSKA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 9 September 1999 with the following members present:

Ms. Michèle PICARD, President
Mr. Rona AYBAY, Vice-President
Mr. Hasan BALIĆ
Mr. Želimir JUKA
Mr. Miodrag PAJIĆ
Mr. Andrew GROTRIAN

Mr. Anders MÅNSSON, Registrar
Ms. Olga KAPIĆ, Deputy Registrar

Having considered the aforementioned application introduced pursuant to Article VIII(1) of the Human Rights Agreement ("the Agreement") set out in Annex 6 to the General Framework Agreement for Peace in Bosnia and Herzegovina;

Adopts the following decision pursuant to Article VIII(2)(a) of the Agreement and Rules 49(2) and 52 of the Chamber's Rules of Procedure:

I. FACTS

1. The applicants are brother and sister. Their father was the holder of the occupancy right over an apartment located at Miloša Obrenovića No. 8, Prijedor, until 24 May 1997, when he died.

2. After her father's death the applicant Ms. Vesna Šteković filed a request with the Municipality of Prijedor, the holder of allocation right, to succeed into his occupancy right.

3. On 29 July 1997 the Republic Public Attorney, Deputy's Office in Prijedor ("the Public Attorney"), representing the holder of the allocation right, initiated proceedings before the Municipality for the eviction of Ms. Šteković from the apartment. The Municipal Secretariat for Urbanism and Housing-Communal Affairs ("the Secretariat") as the organ competent to deal with both the requests, the applicant's and the request by the Public Attorney has decided to join the cases. On 16 September 1997 the Secretariat refused Ms. Šteković's request and ordered her to vacate the apartment, following the Public Attorney's request. The applicant appealed against the decision. On 29 December 1997 the Ministry for Urbanism, Housing-Communal Affairs, Civil Engineering and Ecology ("the Ministry") invalidated the decision of 16 September 1997 and instructed the Secretariat to reconsider the applicant's request and to reject the request of the Public Attorney, as premature.

4. On 24 August 1998 the applicant, Mr. Slobodan Šteković, also requested the Secretariat to succeed into his father's occupancy right.

5. On 14 December 1998 the Secretariat issued a decision refusing the requests of both the applicants since neither of them met the requirements prescribed by the Law on Housing Relations. The Secretariat made its decision upon the statement of a witness who was the neighbour of the applicants' father, stating that neither of the applicants actually lived in the apartment. The Secretariat took for valid a written statement signed by the applicants' father in 1994 that he lived in the house only with his wife, who died later that year. His signature on this document was subject to examination of an expert in graphology and was proved to be signed by him.

6. The Secretariat has found that the applicants could not be considered to be members of the family household since both of them had registered residence in Belgrade, FR Yugoslavia, as well as in Prijedor, and their families lived in Belgrade. The Secretariat has heard a number of witnesses and the expert in graphology.

7. The applicants appealed against the decision. On 1 March 1999 the Ministry refused their appeals. On 13 April 1999 the applicants initiated an administrative dispute before the Supreme Court for the invalidation of the Ministry decision.

8. The Public Attorney has repeated the request for the eviction of the applicants. On 22 June 1999 the Secretariat issued a decision ordering the applicants vacate the apartment within three days. The applicants appealed against the decision.

9. Apparently the applicants could not agree on who will succeed into the occupancy right of their late father and therefore on 10 September 1997, Ms. Šteković initiated civil proceedings before the Municipal Court in Prijedor ("the court") requesting the court to decide on that issue. She has also requested the court to make a provisional measure prohibiting the eviction until the final court decision. Apparently the court has not followed her request for provisional measure. It appears that the court has suspended the consideration of the applicants' request, until the final decision in the administrative proceedings.

II. COMPLAINTS

10. The applicants complain that their right to property and right to freedom of speech have been violated. They also complain that their public documents have not been accepted as sufficient evidence and they state that there have been irregularities in the proceedings.

III. PROCEEDINGS BEFORE THE CHAMBER

11. The application was introduced on 1 July 1999 and registered on the same day. The applicants requested that the Chamber order a provisional measure to take all necessary action to prevent their eviction.

12. On 7 July 1999 the First Panel refused the request for a provisional measure.

IV. OPINION OF THE CHAMBER

13. Before considering the merits of the case the Chamber must decide whether to accept the case, taking into account the admissibility criteria set out in Article VIII(2) of the Agreement. According to Article VIII(2)(a), the Chamber must consider whether effective remedies exist and whether the applicant has demonstrated that they have been exhausted.

14. In the present case the Chamber notes that the applicants initiated an administrative dispute before the Supreme Court of the Republika Srpska on 13 April 1999. The Chamber further notes that the Municipal Court proceedings are suspended because of the pending administrative proceedings. The Chamber has no reason to doubt that the existing remedies are effective, since the proceedings before the Supreme Court were pending for less than three months at the time they introduced the application to the Chamber, and the Municipal Court proceedings were suspended because of the further action the applicants have taken.

15. Accordingly, the Chamber decides not to accept the application pursuant to Article VIII(2)(a) of the Agreement, as the applicant has not demonstrated that the effective domestic remedies have been exhausted.

V. CONCLUSION

16. For these reasons, the Chamber, unanimously,

DECLARES THE APPLICATIONS INADMISSIBLE.

(signed)
Anders MÅNSSON
Registrar of the Chamber

(signed)
Michèle PICARD
President of the First Panel